IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 130 OF 2002
IN
WRIT PETITION NO. 6154 OF 2001

1. Rajendra Zumber Jagtap
   At and Post Vanewadi
2. Chandrakant Sopana Salunkhe
   At and Post Hol, Tal:Baramati
   Dist : Pune
3. Ravindra Somnath Jamdade,
   At & Post Nimbut
   Tal : Baramati, Dist : Pune
4. Sunil Ashokrao Yadav
   At & Post Vanewadi
   Tal : Baramti, Dist: Pune
5. Hanumant Krishna Gadadare
   At & Post Khandobachi Wadi
   Tal: Baramati, Dist : Pune
6. Balasaheb Chandulal Rane
   Someshwarnagar, Tal: Baramati
   Dist : Pune
7. Sanjay Shankar Jagdale
   Someshwarnagar, Tal: Baramati
   Dist : Pune
8. Manoihar Sadashiv Nazirkar
   At & Post Nazare,, Tal:
   Purender, Dist: Pune
9. Ganpat Rambhau Pokale
   At & Post Nira, Tal: Purender
   Dist: Pune
10. Sanjay Gulabrao Gaikwad
    Someshwarnagar, Tal: Baramati
    Dist : Pune
11. Dnyaneshwar Dagadu Dagade
    At & Post Andori, Tal:
    Khandala, Dist : Satara
12. Dilip Shivram Malshikare
    At & Post Korale, Dist:
    Baramati, Dist : Pune
13. Kashinath Balasaheb Raut
    At & Post Rautwadi,
    Tal: Purender, Dist : Pune
14. Govind Tukaram Suryawanshi
    At & Post Wanewadi, Tal:

Baramati, Dist : Pune]
15. Jagannath Bhiku Bansode]
At & Piost Nimbut, Tal :]
Baramati, Dist : Pune]
16. Sanjay Narayan Pharande]
At & Post Murum, Tal :]
Baramati, Dist : Pune]
17. Shamkant Baban Wable]
At & Post Nimbut, Tal:]
Baramati, Dist : Pune]
18. Bagwan Sahebrao Shedge]
At & Post Nimbut, Tal :]
Baramati, Dist: Pune]
19. Sandip Mohan Lokhade]
At & Post Nimbut, Tal:]
Baramati, Dist : Pune]
20. Popat Dinkar Khalate]
At & Post Late, Tal :]
Baramati, Dist : Pune]
21. Appasaheb Rambhau Kale]
Someshwarnagar, Tal :]
Baramati, Dist : Pune]
22. Sabhaji Nanasaheb Malshikare]
At & Post Korale, Tal :]
Baramati, Dist : Pune]
23. Sunil Dnyadeo Kshirsagar]
At & Post Nimbut, Tal :]
Baramati, Dist : Pune]
24. Rahul Jayaram Sorate]
At & Post Karanje, Tal :]
Baramati, Dist : Pune]
25. Maduker Eknath Hirve]
At & Post Wadgaon, Tal :]
Baramati, Dist : Pune]..Petitioners

versus

1. Baramati Taluka Sakhar]
Kamgar Sabha, Someshwarnagar]
Taluka Baramati, Dist : Pune]
Through its General Secretary]
2. The Managing Director,]
Someshwar Sahakari Sakhar]
Karkhana Ltd, Someshwarnagar]
Tal: Baramati, Dist: Pune]
3. The Industrial Court,]
PMT Commercial Building]

Swargate, Pune 411 042]..Respondents

Mr. Shekhar Naphade, Counsel, i/b. M/s. Haresh Mehta & Co. for the Petitioners/

Mr. P. M. Patil for the Respondent No.1.

Mr. K. S. Bapat for the Respondent No.2.

CORAM : D. G. DESHPANDE, &
Smt. R. S. DALVI, JJ.

DATE : 7TH DECEMBER, 2006

ORAL JUDGMENT : (Per : D. G. Deshpande, J.)

1. Heard Counsel for the Petitioners and the Respondent Nos. 1 and 2.

2. The impugned order of the Single Judge came to be passed in Writ Petition No. 6154 of 2001 on 6.3.2002, by which the Writ Petition was dismissed, and, therefore this Letters Patent Appeal.

3. Respondent No.1 is the Recognized Union, Respondent No.2 is the Managing Director of Someshwar Sahakari Sakhar Karkhana Ltd. and the petitioners who are 25 in number are the employees of the said Sakhar Karkhana. Complaint came to be filed by the respondent No.1 against the management on the ground

that management has committed acts of unfair labour practices. Relief that was sought in the complaint was that members, on whose behalf the complaint was filed and who were enlisted in Annexure 'A' of the complaint, should be made permanent from the date of their appointment and they should be directed to be paid monetary benefits of permanent workmen.

4. In the course of time or proceedings several workmen were made permanent by the management, and therefore, those workmen who were made permanent moved the Industrial Court by an application that their names be deleted from Annexure 'A' because they did not intend to pursue the complaint. The Industrial Court after hearing the parties dismissed that application on the ground that it was not maintainable. This was done by the Industrial Court after framing for consideration the following point:

> **"Whether individual employee / member of the Complainant Union can be permitted to appear and file affidavit / pursis to withdraw the complaint to his extent?"**

5. Against this order of the Industrial Court, the

present petitioners, who are 25 in number filed the Writ Petition. It was their contention that even if the petitioners were members of the respondent No.1 Union they cannot be prevented from moving the Industrial Court to get their names deleted from the complaint filed by the Union. The Single Judge after referring to the nature of the complaint observed as under:

> **"The complaint has been filed under the provisions of the M.R.T.U and P.U.L.P. Act which also provides for recognition of a recognised union. The party before the Industrial Court is the recognised Union, which has filed a complaint. The dispute raised is on behalf of a body of workmen. The dispute raised is an Industrial Dispute on behalf of the members of other workers employed in the Industry. The Industrial Court in such a case will be called upon to decide whether there is an act of unfair Labour Practices committed by the Management. The settlement between some workers and the Management by itself will not result in the Unfair Labour Practices ceasing to exist, if on the date of the complaint there was in fact as act committed which amounted to an unfair Labour Practices."**

It is also observed subsequently that :

> **"In a dispute of collective nature individual persons have no right to be joined as proper or necessary parties. Their presence is not necessary for considering the grant of relief or making the order passed effective."**

And in this background of the matter, dismissed the writ petition and hence this Letters patent Appeal.

6. Counsel for the petitioners drew our attention to Section 21 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "Trade Union Act") and Section 33 and 33A of The Bombay Industrial Relations Act, 1946 (hereinafter referred to as the "Act of 1946"). He also contended that what the petitioners wanted that in the complaint lodged by the Respondent No.1 Union they do not want to be a party and their name should be deleted from the Annexure 'A', referred to above, and, no provision of law could prevent them from doing so. He also contended that this aspect of the matter has not been considered in proper perspective by the Single Judge, and therefore, Letters Patent Appeal was required to be allowed.

7. On the other hand, counsel for the Union - Respondent No.1 urged that Sections 33 and 33-A of the Act of 1946, clearly bar individuals from appearing in all proceedings before the Industrial Court and the right to do so was given to a Recognised Union. He also urged that there was no dispute that the Respondent No.1 was a Recognised

Union, and, therefore both the Industrial Court and the Single Judge rightly dismissed the petition. Our attention was drawn by the Counsel for the Respondent No.1 to the following Judgments in support of his contention :

1) Supreme Court Judgment reported in 1971(1) L.L.J. 274 Santuram Khudal vs. Kimatrai Printers, Processors and others.

2) Supreme Court Judgtment reported in (1995) 3 S.C.C. 78 Shramik Uttarsh Sabha vs. Raymond Woollen Mills Ltd. & Others.

3) Judgment of Single Bench of this Court reported in 1996(1) Mh.L.J. 539 Bank Karmachari Sangh vs. K. R. Pawar, Member, Industrial Court, Pune.

4) Judgment of Division Bench of this Court reported in 2006 1 CLR 543 Hindustan Lever Limited vs. Hindustan Lever Employees Union & Anr.

8. On the basis of the aforesaid four judgments and

the provisions of the aforesaid Act, counsel for the Respondent No.1 contended that the Petitioners had no right to appear before the Industrial Court and contend that their names should be deleted. According to him, if this was permitted then every employer will win over, by whatever means available, the individual employee and enter into agreement with them and frustrate the existence of trade unions' affecting power of collective bargaining which may ultimately affect the welfare of the workmen.

9. In our considered opinion, we do not find any force in the submissions made by the Counsel for the petitioners. Section 33A of the Act of 1946, upon which reliance was placed by him, is of no help to him, because it refers to disputes between employees and employer referred to arbitration of a Labour Court or the Industrial Court under Section 72. Section 72 is reproduced as under:

> **"72. Disputes between employees and employees may be referred by [State] Government to arbitration of Labour Court or Industrial Court.- (1) Notwithstanding anything hereinbefore contained the [State] Government may, at any time on the report of the Labour officer or on its own motion, refer any industrial dispute between employers and employees to the arbitration of a Labour Court or the Industrial Court.**

(2) The provisions of this Chapter with such modifications as may be prescribed shall apply to such arbitration.

(3) The employers of such employees shall in the prescribed manner be made parties to such arbitration."

The very wording of Section 72 will show that it covers altogether different area and present dispute did not come before the Industrial Court on a reference by the Government. The initiative came by way of complaint lodged by the Union, therefore, Section 72 has no application in the instant case and consequently the present petitioners cannot bang upon the provisions of Section 33A of the Act of 1946. Section 21 on the other hand of the Trade Unions Act gives right of appearance or right to act only to a recognised union.

10. All the four judgments relied upon by the counsel for the Respondent No.1, clearly laid down that individual workmen has no right of appearance in case of a dispute before the industrial Court and when they are represented by a Recognised Union. In paragraph 13 of Santuram’s case, the Supreme Court has clearly held:

" Now a combined reading of Ss.80, 27A, 30, 32

> **and 33 of the Act leaves no room for doubt that consistent with its avowed policy of preventing the exploitation of the workers and augmenting their bargaining power, the Legislature has clothed the representative-union with plenary power to appear or act on behalf of the employees in any proceedings under the Act and has deprived the individual employees or workmen of the right to appear or act in any proceedings under the Act where the representative-union enters appearance or acts as representative of employees...."**

The Judgment of the Supreme Court in Girja Shankar Kashi Ram vs.The Gujarat Spinning and Weaving Co. Ltd. (1962) 2 S.C.R. 890, was relied upon in Santuram's case, wherein it was observed as follows:

> **"The result, therefore, of taking Ss. 27A, 32 and 33 together is that S. 27A first places a complete ban on the appearance of an employee in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in SS. 32 and 33. Section 32 is concerned with all proceedings before the authorities and gives power to the authorities under the Act to permit an employee himself to appear even though a representative of employees may have appeared but this permission cannot be granted where the representative-union has appeared as a representative of employees. Section 33 which is the other exception allows an employee to appear through any person in certain proceedings only even though a representative of employees might have appeared; but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a representative union has put in appearance as the representative of employees. It is quite clear, therefore, that the Scheme of the Act is that where a represnetative-union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instance**

the proceedings might have begun under S. 42(4). But where the appearance is by any representative of employees other than a representative-union authorities under S. 32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in S. 33. But whenever the representative-union has made an appearance, even the employee cannot appear in any proceedings under the Act and the representation must be confined only to the representative-union. The complete ban, therefore, laid by S. 27A on representation otherwise than through a representative of employees remains complete where the representative of employees is the representative-union that has appeared; but if the representative of employees that has appeared is other than the representative-union then Ss. 32 and 33 provide for exceptions with which we have already dealt. There can, therefore, be no scope from the conclusion that the Act plainly intends that where the representative-union appears in any proceeding under the Act even though that proceeding might have commenced by an employee under S.42(4) of the Act, the representative-union alone can represent the employee and the employee cannot appear or act in such proceeding."

11. In the second judgment of the Supreme Court in Shramik Uttarsh Sabha also the same view has been accepted and adopted by the Supreme Court. There very question involved in that Appeal was:

> **"Does a representative-union under the Bombay Industrial Relations Act, 1946 (BIR Act) have the exclusive right to represent the employees of the Industry concerned in complaints relating to unfair labour practices under the Maharahstra Recognition of Trade unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) other than those specified in Items 2 and 6**

of the Schedule IV thereof."

In this judgment the Supreme Court also relied upon the judgment in the case of Girja Shankar Then in paragraphs 14 and 15 the Supreme Court has observed as under:

> **"14. Section 21 of the MRTU & PULP Act, upon which emphasis was laid on behalf of the appellants, states that no employee in an undertaking to which the provisions of the Industrial Disputes Act applies shall be allowed to appear or act or be allowed to be represented in any proceeding relating to the unfair labour practices specified in Items 2 and 6 of Schedule IV except through the recognised union. It is important to note that the reference is to employees in an undertaking to which the Industrial Disptues act applies and not to employees in an undertaking to which the BIR Act applies. Apart therefrom, the section permits an employee, not a union other than the recognised union, to so appear. The provisions of Section 21 do not, therefore, lead to the conclusion that a union other than a representative union can appear in proceedings relating to all unfair labour practices other than those specified in Items 2 and 6 of Schedule IV.**
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> **15. It is true that an order of the Industrial Court in the proceedings concerned would bind all employees of the first respondent even though there may be some among them who own allegiance not to the representative union but to the appellant. The objective of the provisions of the BIR Act and the MRTU & PULP Act, read together, and the embargo placed upon representation by anyone other than the representative of the employees, who, for the most part, is the representative union, except in matters pertaining to an individual dispute between an employee and the employer, is to**

> **facilitate collective bargaining. The rationale is that it is in the interest of industrial peace and in the public and national interest that the employer should have to deal, in matters which concern all or most of its employees, only with a union which is representative of them. It may be that a union which was representative of the employees may have in the course of time lost that rerpesentative character; it is then open, under the provisions of the BIR Act, for a rival union to seek to replace it."**

12. In the third judgment of Single Bench [B. N. Srikrishna, J. (as he then was)] of this court in the case of Bank Karmachari Sangh, it was observed as under:

> **Section 30 of the Act prescribes the hierarchy of persons entitled to appear or "act", in the order of preference, on behalf of employees in an industry in an local area. Significantly, the represnetative union is the first in the hierarchical list enumerated in section 30. Section 42(2) provides that an employee desiring a change in respect of an industrial matter not specified in Schedule I or III, shall give a notice in the prescribed form to the employer "through the representative of employees" who shall forward copy of the notice to the authorities prescribed therein. Under the scheme of the Bombay Industrial Relations Act, any industrial dispute with regard to the industrial matters not specified in Schedules I and III can only be raised by employees by issuing a notice of change under sub-section (2) of section 42, which can only be done through the representative of employees. Section 42 has been interpreted by judicial pronouncements taking the view that the representative union does not act merely as a Post Office and has wide discretion in the matter. Under the scheme of the Bombay Industrial Relations Act, the representation on behalf of the employees is industrywise. So long as the union is qualified to act as a**

> **representative union by fulfilling the qualifications contained in sections 13 and 14 of the Act, it is entitled to be registered as a representative union. It is important to notice that the membership criterion for a representative union under section 13 is membership not less than 25% of the total number of employees employed in any industry and not in any industrial undertaking in the industry. As long as this criterion is fulfilled, the representative union is entitled to act on behalf of all employees in the industry as the representative union irrespective of individual membership of employees in individual undertakings. The reason for this is not far to seek. As the preamble of the Act indicates, the Act is "An Act to regulate the relations of employers and employees, to make provisions for settlement of industrial disputes..." The underlying philosophy of the Act appears to be to discourage mushrooming of unions and to encourage stable and healthy collective bargaining between the employer and the recognized Collective Bargaining Agent for the entire industry. It is this refrain which recurs throughout the scheme of the Act, reflecting itself in the several provisions of the Act, which were noticed by the Supreme Court in the three decisions referred to above."**

13. In the last judgment of the Division Bench of this Court in Hindustan Lever Limited case, the question was whether individual settlement entered into between employer and employee was illegal and the Industrial Court has given a finding against the employer. This view was confirmed by the Single Judge and the Division Bench considering various judgments of the Supreme Court upheld that view.

14. It will be clear from the aforesaid four judgments that the Single Judge was justified in dismissing the petition.

15. On the face of it, the argument of Counsel for the Petitioner is found attractive that workmen simply want to get their names deleted and there should be no objection in doing that but rightly this prayer is rejected by the Industrial Court and the Single Judge, because if it is permitted the bargaining power of the Recognised Union will be totally nullified and will become zero. Therefore, for all the reasons stated above and particularly the view expressed by the Supreme Court and this Court in all the four Judgments referred to above, we do not find any force in the submissions made by the counsel for the Appellants. In the result, Letters Patent Appeal is dismissed.

(D.G. DESHPANDE, J.)

(Smt. R.S. DALVI, J.)